

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Administration and Financial Management

4 (Amendment)

5 907 KAR 1:645. Resource standards for Medicaid.

6 RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C.
7 1396a, b, d, 1397jj(b), p, Public Law 109-171

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

9 NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9,~~
10 ~~2004, reorganized the Cabinet for Health Services and placed the Department for~~
11 ~~Medicaid Services and the Medicaid Program under the Cabinet for Health and Family~~
12 ~~Services.]~~ The Cabinet for Health and Family Services, Department for Medicaid
13 Services has responsibility to administer the Medicaid Program. KRS 205.520(3)
14 authorizes the cabinet, by administrative regulation, to comply with any requirement that
15 may be imposed, or opportunity presented, by federal law for the provision of medical
16 assistance to Kentucky's indigent citizenry. This administrative regulation establishes
17 the resource standards for determining eligibility for Medicaid.

18 Section 1. Definitions.

19 (1) "ABD" means an individual who is aged, blind, or has a disability.

20 (2) "Department" means the Department for Medicaid Services or its agent.

21 (3) "Homestead" means property which an individual:

1 (a) Has an ownership interest in; and

2 (b) Uses as his or her principal place of residence.

3 (4) "Individual development account" means an account containing funds for the
4 purpose of continuing education, purchasing a first home, business capitalization or
5 other purposes allowed by federal regulations or clarifications which meets the criteria
6 established in 921 KAR 2:016.

7 (5) "K-TAP" means Kentucky's version of the federal block grant program of
8 Temporary Assistance for Needy Families (TANF), a money payment program for
9 children who are deprived of parental support or care due to:

10 (a) Death;

11 (b) Continued voluntary or involuntary absence;

12 (c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents
13 are in the home; or

14 (d) Unemployment of one (1) parent if both parents are in the home.

15 (6) "Liquid resource" means cash, savings accounts, checking accounts, money
16 market accounts, certificates of deposit, bonds and stocks.

17 (7) "Permanent institutionalization" means residing in a nursing facility or
18 intermediate care facility for the mentally retarded and developmentally disabled for six
19 (6) months or more.

20 (8) "Poverty level guidelines" means the poverty income guidelines updated annually
21 in the Federal Register by the United States Department of Health and Human
22 Services, under authority of 42 U.S.C. 9902(2).

23 (9) "Real property" means land or an interest in land with an improvement,

1 permanent fixture, mineral, or appurtenance considered to be a permanent part of the
2 land, and a building with an improvement or permanent fixture attached.

3 (10) "Resources" mean cash money and other personal property or real property
4 that an individual:

5 (a) Owns;

6 (b) Has the right, authority or power to convert to cash; and

7 (c) Is not legally restricted for support and maintenance.

8 (11) "SSI" means the Social Security Administration Program called supplemental
9 security income.

10 Section 2. Resource Limitations.

11 (1) For the medically needy as established in 907 KAR 1:011, the upper limit for
12 resources for a family size of one (1) and for a family size of two (2) shall be \$2,000 and
13 \$4,000 respectively, with fifty (50) dollars for each additional member.

14 (2) For a pregnant woman or a child meeting the following criteria, resources shall
15 be disregarded:

16 (a) A child under age one (1);

17 (b) A child who is at least age one (1) but under age six (6);

18 (c) A child who is at least age six (6) but under age nineteen (19) who is eligible
19 under federal poverty level guidelines;

20 (d) A targeted low income child, as defined in 42 U.S.C. 1397jj(b), from birth to age
21 nineteen (19).

22 (3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary,
23 qualified working disabled individual, or a Medicare qualified individual, resources shall

1 be limited to twice the allowable amount for the SSI Program.

2 (4) For a pass-through recipient as established in 907 KAR 1:640, a person with
3 hemophilia who received a settlement in a class action lawsuit as described in 907 KAR
4 1:011, or a child who lost supplemental security income eligibility due to the change in
5 definition of childhood disability as established in 907 KAR 1:011, resources shall be
6 limited to the allowable amounts for the SSI Program.

7 (5) For an AFDC-related Medicaid case, the resource limit shall be \$1,000.

8 (6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for
9 Medicaid nursing facility services or other Medicaid long term care services if the
10 individual's equity interest in his or her home exceeds \$500,000 unless:

11 (a) The individual has a spouse who is lawfully residing in the individual's home;

12 (b) The individual has a child under the age of twenty-one (21) who is lawfully
13 residing in the individual's home; or

14 (c) The individual has a child of any age who is blind or permanently and totally
15 disabled who is lawfully residing in the individual's home.

16 Section 3. Resource Exclusions.

17 (1)(a) A homestead, household or personal effects, and farm equipment shall be
18 excluded from consideration without limitation on value.

19 (b) After permanent institutionalization, property shall cease to be a homestead
20 unless:

21 1. A spouse or other dependent family member continues to reside there; or

22 2. A signed statement verifies that the permanently-institutionalized individual
23 intends to return to the homestead.

1 a. The statement shall be signed by:

2 (i) The permanently-institutionalized individual;

3 (ii) A representative payee;

4 (iii) A person who has power of attorney for the individual;

5 (iv) The individual's guardian; or

6 (v) Another legal representative; and

7 b. Shall require annual renewal.

8 (2) For an adult Medicaid case:

9 (a)1.[;] Equity of \$6,000 in income-producing, nonhomestead real property, business
10 or nonbusiness, essential for self-support, shall be excluded from consideration.

11 2. The value of property, including the tools of a tradesperson or the machinery or
12 livestock of a farmer, that is essential for self-support for the individual or spouse, or
13 family group in the instance of a family with a child, and which is used in a trade or
14 business or by the individual or member of the family group as an employee shall be
15 excluded from consideration as a resource.

16 (b) Except as provided in paragraph (c) of this subsection, equity of \$4,500 in
17 automobiles shall be excluded from consideration.

18 (c) If an automobile is used as a home, for employment, to obtain medical treatment
19 of a specific or regular medical problem, or if specially equipped for use by an individual
20 with a disability, the total value of the automobile shall be excluded.

21 (d) A payment or benefit from a federal statute, other than an SSI benefit, shall be
22 excluded from consideration as a resource if precluded from consideration in an SSI
23 determination of eligibility by the specific terms of the statute.

1 (3) For an ABD Medicaid case:

2 (a) Real property or nonreal property shall be excluded from consideration if it can
3 be demonstrated the individual is making a reasonable effort to sell the property at fair
4 market value.

5 (b)1. Nonhome property which was previously the homestead property of a
6 permanently-institutionalized individual shall be excluded for six (6) months if there is a
7 verified effort to sell the property at fair market value.

8 2. Additional time to sell the property may be allowed, on a case-by-case basis, if it
9 can be demonstrated that a reasonable effort to sell the property at fair market value
10 within the specified time frame has failed.

11 3. Reasonable effort to sell the property shall consist of:

12 a. Listing the property with a real estate agent if the agent:

13 1. Places a "For Sale" sign on the property which is clearly visible from the nearest
14 public road; and

15 2. Advertises the property in the local newspaper or on local television or radio
16 stations; or

17 b. A combination of at least two of the following actions:

18 1. Advertising the property in the local newspaper or on local television or radio
19 stations;

20 2. Placing a "For Sale" sign on the property which is clearly visible from the nearest
21 public road;

22 3. Distributing fliers advertising the property for sale;

23 4. Posting notices regarding availability of the property on community bulletin

boards; or

5. Showing the property to interested parties on a continuing basis.

(c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) For an AFDC-related Medicaid case, \$1,000 in resources shall be excluded from consideration.

~~(5)[(a) For an adult Medicaid case, except as provided in paragraph (b) of this subsection, equity of \$4,500 in automobiles shall be excluded from consideration.~~

~~(b) For an adult Medicaid case, if an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.~~

~~(6)]~~ A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account or other identifiable fund shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

1 (6) ~~[(7)]~~ A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or
2 other repository which is customarily and traditionally used for the remains of a
3 deceased person shall be excluded from consideration as a countable resource without
4 regard to value.

5 (7) ~~[(8)(a) For an ABD Medicaid case, proceeds from the sale of a home shall be~~
6 ~~excluded from consideration for three (3) months from the date of receipt if used to~~
7 ~~purchase another home.~~

8 ~~(b)]~~ For a family-related or an AFDC-related Medicaid case, proceeds from the sale
9 of a home shall be excluded from consideration for six (6) months from the date of
10 receipt if used to purchase another home.

11 (8) ~~[(9)]~~ Resources of an individual who is blind or has a disability shall be excluded
12 if the resources are included in an approved plan for achieving self-support (PASS).

13 (9) ~~[(10)]~~ An individual development account up to a total of \$5,000, excluding
14 interest accruing, shall be excluded from consideration as a resource for an AFDC-
15 related Medicaid case.

16 (10) ~~[(11) For an adult Medicaid case, a payment or benefit from a federal statute,~~
17 ~~other than an SSI benefit, shall be excluded from consideration as a resource if~~
18 ~~precluded from consideration in an SSI determination of eligibility by the specific terms~~
19 ~~of the statute.~~

20 ~~(12)]~~ Disaster relief assistance shall be excluded from consideration.

21 (11) ~~[(13)]~~ Cash or in-kind replacement for repair or replacement of an excluded
22 resource shall be excluded from consideration if used to repair or replace the excluded
23 resource within nine (9) months of the date of receipt.

1 (12) ~~[(14)]~~ A life interest that a Medicaid applicant or recipient has in real estate or
2 other property shall be excluded from consideration as an available resource.

3 (13) ~~[(15)]~~ Real property other than the homestead shall be excluded from
4 consideration if:

5 (a) The property is jointly owned and its sale would cause loss of housing for the
6 other owner or owners;

7 (b) Its sale is barred by a legal impediment; or

8 (c) The owner's reasonable efforts to sell by informing the public of his intention to
9 sell the property at fair market value have been unsuccessful.

10 (14) ~~[(16)]~~ A cash payment intended specifically to enable an applicant or recipient to
11 pay for a medical or social service shall not be considered as a resource in the month of
12 receipt or for one (1) calendar month following the month of receipt. If the cash is still
13 being held at the beginning of the second month following its receipt, it shall be
14 considered a resource.

15 (15) ~~[(17)]~~ An amount received which is a result of an underpayment or a retroactive
16 payment of benefits from retirement, survivors, and disability insurance (RSDI) benefits
17 or SSI shall be excluded as a resource for the first six (6) months following the month in
18 which the amount is received.

19 (16) ~~[(18)]~~ A federal Republic of Germany reparation payment shall not be
20 considered as an available resource.

21 (17) ~~[(19)]~~ An amount received from a victim's compensation fund established by a
22 state to aid victims of crime shall be:

23 (a) Completely excluded as a resource if the individual can show that the amount

1 was paid as compensation for expenses incurred or losses suffered as a result of a
2 crime; or

3 (b) Excluded as a resource for nine (9) months if the individual can show that the
4 amount was paid for pain and suffering.

5 (18) [~~(20)~~] An Austrian social insurance payment based on a wage credit granted
6 under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded
7 from resource consideration.

8 (19) [~~(21)~~] An individual retirement account, Keogh plan or other tax deferred asset
9 shall be excluded as a resource until withdrawn.

10 (20) [~~(22)~~] A payment made from a fund established by a settlement in the case of
11 Susan Walker v. Bayer Corporation or payment made for release of claims in this action
12 shall be excluded from consideration as an available resource.

13 (21) [~~(23)~~] A payment received from a class action law suit entitled "Factor VIII or IX
14 Concentrate Blood Products Litigation" shall be excluded from consideration as an
15 available resource.

16 (22) [~~(24)~~] An annuity that is irrevocable and cannot be sold or transferred shall be
17 excluded from consideration as a resource.

18 Section 4. Resource Exemptions.

19 (1) A resource which is exempted from consideration for purposes of computing
20 eligibility for the SSI Program shall be exempted from consideration by the department.

21 (2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources
22 shall be exempted.

907 KAR 1:645

REVIEWED:

Date

Glenn Jennings, Commissioner
Department for Medicaid Services

Date

Mike Burnside, Undersecretary
Administrative and Fiscal Affairs

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on October 23, 2006, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:645

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the resource standards for determining eligibility for Medicaid benefits.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the resource standards for determining eligibility for Medicaid benefits.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in the authorizing statutes by establishing the resource standards for determining eligibility for Medicaid benefits.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the resource standards for determining eligibility for Medicaid benefits.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: Section 6014 of the Deficit Reduction Act of 2005 (DRA), Disqualification for Long-Term Care Assistance for Individuals with Substantial Home Equity, created a new subsection 1917(f)(1)(A) of the Social Security Act (the Act). Subsection 1917(f)(1)(A) of the Act provides that when determining the eligibility of an individual (who does not have a spouse, child under twenty-one (21) or permanently and totally disabled child of any age lawfully residing in the home) for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual's equity interest in his or her home exceeds \$500,000. This amendment ensures compliance with the DRA by permitting the Department for Medicaid Services (DMS) to deny medical assistance for nursing facility services or other long-term care services to applicants, except for the aforementioned exemptions, whose equity interest in their home exceeds \$500,000.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement Section 6014 of the DRA.
 - (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of Public Law No. 109-171, DRA, Section 6014, which requires the denial of medical assistance for nursing facility

services or other long-term care services to applicants (except for aforementioned exemptions) whose equity interest in their home exceeds \$500,000.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by permitting the cabinet to deny medical assistance for nursing facility services or other long-term care services to applicants (except for aforementioned exemptions) whose equity interest in his or her home exceeds \$500,000.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect each Medicaid nursing facility service or other long term care service applicant (unless the individual has a spouse, child under twenty-one (21) or permanently and totally disabled child of any age lawfully residing in the home) whose equity interest in his or her home exceeds \$500,000.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An individual (who does not have a spouse, child under twenty-one (21) or permanently and totally disabled child of any age lawfully residing in the individual's home) who applies for medical assistance with respect to nursing facility services or other long-term care services will be denied if the applicant's equity interest in his or her home exceeds \$500,000. This amendment conforms to the content of Public Law No. 109-171, DRA, Section 6014, which requires the denial of medical assistance for nursing facility services or other long-term care services on behalf of applicants whose equity interest in their home exceeds \$500,000.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is a Medicaid program cost saving measure that conforms to the content of Public Law No. 109-171, DRA, Section 6014 and does not impose a cost on regulated entities.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An applicant for Medicaid nursing facility or other long term care services may gain access to such care if he or she complies with the amendment authorized by Public Law No. 109-171.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: The department anticipates savings as a result of the new federal requirement; however, cannot accurately predict savings given that it lacks data regarding individuals' equity interest amounts.
 - (b) On a continuing basis: The department anticipates savings as a result of the

new federal requirement; however, cannot accurately predict savings given that it lacks data regarding individuals' equity interest amounts.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:645

Contact Person:

Stuart Owen
Stephanie Brammer-Barnes
(564-6204)

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

Yes X No _____

If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid nursing facility service or other long term care service applicant (unless the individual has a spouse, child under twenty-one (21) or permanently and totally disabled child of any age lawfully residing in the home) whose equity interest in his or her home exceeds \$500,000. This amendment will also affect the Medicaid program administered by the Cabinet for Health and Family Services.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by federal law, 42 U.S.C. 1396p
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.
 - (c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration. However, DMS anticipates savings as a result of the new federal requirement, but cannot accurately predict savings given that it lacks data regarding individuals' equity interest amounts.

- (d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: No additional expenditures are necessary to implement this amendment.